THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 20161 of 2005

Date: 07.10.2005

Between:

M/s. Maruthi Agencies, a partnership firm (Regd.)
Having its office at 18/666, 1st floor, opp. Over bridge,
Main road, Adoni, Kurnool district, rep. by its
Managing Partner T.G.Sainath, s/o. T.G.Viswanatham
Setty, r/o. Adoni, Kurnool district

…Petitioner

and

1)Bharat Sanchar Nigam Limited (A Govt. of India
Enterprises), 508, Sales and C.S. Section, BSNL,
Office of CGMT, AP Circle, Nampally station
Road, Hyderabad, rep. by its Chief General
Manager, Telecom, A.P.Circle, Hyderabad
& 2 others

…Respondents

ORDER:

Challenging the order of the second respondent dated 03.09.2005 returning the bid of the petitioner firm, the present Writ Petition is filed.

The facts, in brief, that are necessary for disposal of this Writ Petition are as follows:

The first respondent issued a tender notification for selection of franchises for sale of BSNL Services and products in A.P. circle and the petitioner firm, which satisfies the eligibility criteria, participated in the tender notification in respect of Adoni by sending the same by registered post on 21.04.2005, received by the respondents on 23.04.2005; that on 28.04.2005, when the tenders were opened, it was informed to the authorized representative of the petitioner firm that the documents submitted by the petitioner firm were not found; thereafter, on production of the original acknowledgement card, the officials located the envelope; on a representation by the petitioner firm to that effect, the bid was sent to evaluation committee on the next day, but the committee rejected to consider the same on the ground that the bid received was in torn condition; thereafter, the impugned order was issued stating that the bid was received in torn condition and that the name of territory/district for which the firm applied was not superscripted on the cover. It is the further case of the petitioner that when the cover was received by the respondents, it was not endorsed thereon that it was in torn condition nor they returned it at that stage; that in the representation submitted by the representative of the petitioner firm to the third respondent, it was clearly mentioned that the bid relates to Adoni area; hence, the Writ Petition.

The respondents filed counter affidavit denying the averments in the petition and contending that the selection committee has to follow the prescribed procedure for selection of franchisees; on 28.04.2005, when the boxes were opened, no bid was found from the petitioner-firm; as the cover was received in torn condition, the confidentiality of

the documents was lost; since the cover was not superscripted, the person handling receiving desk could not identify it readily; the bid was not in accordance with the conditions in the notice inviting the tenders; hence, the Writ Petition is liable to be dismissed.

The learned counsel for the petitioner-firm contended that the petitioner is eligible for C type SSA contract work and it submitted its tender along with requisite documents by registered post on 21.04.2005 and the same was received in the office of the respondents on 23.04.2005; that on the date of opening of the tender i.e. 28.04.2005, when the authorized representative of the petitioner – firm was present, the tender document submitted by the petitioner was not found; that on production of original acknowledgement of the tender document, the documents were traced out and placed before the tender valuation committee; but the committee has not considered the tender of the petitioner; that the action of the respondents is violative of the rules; therefore, he prayed to allow the Writ Petition.

On the other hand, the learned standing counsel appearing for the respondents contended that the entire tender process was handled by a duly nominated committee and no bid was received from the petitioner when the tender boxes were received on 28.04.2005; that one day after opening of the bids, the bid was received by the opening committee in torn condition and hence, the same was rejected; that there are no grounds to interfere with the same.

In the present Writ Petition, challenge was made to the proceedings dated 03.09.2005 issued by the second respondent wherein it is stated that the tender document submitted by the petitioner was not considered for evaluation by the opening committee as the bid was received in torn out condition and it was not superscripted on the cover for which territory/district the petitioner applied. It is not in

dispute that on 08.04.2005, the respondents herein issued a notice inviting EOI (Expression of Interest) for selection of franchisees for sale of BSNL services and products in A.P. circle from eligible parties. The petitioner had participated in the tenders in respect of Adoni. On two grounds viz. firstly, that the committee received the sealed cover in torn condition and secondly, that it was not superscripted on the cover for which territory/district it was applied, the tender was rejected by the respondents. One of the conditions in the notice inviting EOI is that the duly completed and sealed EOI documents along with name of the District and Territory written on the top of the document as well as envelope shall be dropped in the bid box kept in the chamber of AGM(PR), O/o. CGMT, AP CIRCLE, Ground Floor, Door Sanchar Bhavan, Nampally Station Road, Hyderabad-1, either in person before 13.00 hours of 28.04.2005 or by registered post addressed to the Deputy General Manager (CS & Sales), % CGMT, AP Circle, 3rd floor, Door Sanchar Bhavan, Nampally road, Hyderabad-1 so as to reach the office before 12.00 hours of 28.04.2005. It is also stated that BSNL is not responsible for delay incurred in transit.

The contention of the learned counsel for the petitioner is that the petitioner-firm sent its tender on 21.04.2005 by registered post and the same was received in the office on 23.04.2005 and the third respondent accepted the tender documents, and therefore, the opening committee cannot reject the same on the aforesaid two grounds. The learned counsel placed strong reliance on a decision in *M/s. Poddar Steel Corporation v. M/s. Ganesh Engineering Works & others,* wherein it is held as follows: (para 6)

> "It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank, clause No.6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general preposition it can not be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender

notice can be classified into two categories – those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case, the authority issuing the tender may be required to enforce them rigidly. In the other cases, it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases…."

The learned counsel also relied upon another decision in *G.F.Fernandez v. State of Karnataka & others* wherein it is held as follows:(para 15)

"Thirdly, the conditions and stipulations in a tender notice like this have two types of consequences. The first is that the party issuing the tender has the right to punctiliously and rigidly enforce them. Thus, if a party does not strictly comply with the requirements of para III, V or VI of the NIT, it is open to the KPC to decline to consider the party for the contract and if a party comes to court saying that the KPC should be stopped from doing so, the court will decline relief…"

Basing on the above judgments, the learned counsel for the petitioner submitted that receipt of documents in a cover in torn condition can not be strictly construed as an essential condition.

As per the terms and conditions in the notice inviting EOIs, the tenders should be submitted in sealed covers. Whatever may be the reason, the tender cover, which was in a torn condition, was placed before the appropriate committee. Though the bid is not quoting of any rates for a work, for the reasons best known to the respondents, sealed tenders were invited for the selection of franchisees for sale of BSNL services and products. There must be some purpose to call for the tenders in sealed cover and opening of the same in the presence of bidders or the authorized representatives of the bidders. Since the cover submitted by the petitioner was in torn condition, the secrecy of the document was lost. Therefore, the action of the respondents can not be said to be arbitrary.

The other ground on which the petitioner's bid was not accepted was

non-superscription of the territory/district for which it was applied, on the cover containing the bid. There is a bid committee to consider all the bids provided the petitioner comes under the eligibility criteria. One day after opening of the bids, the bid of the petitioner was presented to the bid opening committee. The committee consists of three officials who are in the Senior Official cadre. No *mala fides* are attributed to any of the members of the committee. Since the bid of the petitioner was not in accordance with the terms of the tender, the same has been rightly rejected. While exercising the power of judicial review in respect of contract entered into on behalf of the State, the Court is concerned primarily as to whether there is any infirmity in the decision making process. Where there is arbitrary action on the part of the respondents or the case of the petitioner has not been treated along with others, the court can certainly examine the decision making process. Inviting the tenders in sealed covers is an administrative decision. Though it is not awarding of contract basing on the lowest quotation, the Court does not have the expertise to take a different view. Therefore, viewed from any angle, there is no arbitrariness on the part of the respondents in rejecting the case of the petitioner. It is not a case affected by bias or actuated by *mala fides*.

Therefore, the Writ Petition is devoid of merits and is, accordingly, dismissed. No costs.

(K.C.Bhanu, J.)

07 .10.2005

DRK